

(2010) 01 GUJ CK 0043

In the Gujarat High Court

Case No : Special Civil Application No. 9043 of 2009

Himmatbhai Ramjibhai and Others

APPELLANT

Vs

Second Special Land Acquisition Officer and Others

RESPONDENT

Date of Decision : 20-01-2010

Acts Referred:

Constitution of India, 1950 — Article 226

Land Acquisition Act, 1894 — Section 18, 23(1), 23(1A), 23(2), 28

Citation : (2010) 51 GLR 1588

Hon'ble Judges : R.M. Doshit, J;K.M. Thaker, J

Bench : Division Bench

Advocate : Nitin M. Amin, for the Appellant; Krishna G. Rawal and Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

R.M. Doshit, J.—Heard the learned Advocates.

2. With the consent of the learned Advocates, the petition is heard and decided finally.

3. This petition under Article 226 of the Constitution is filed by the land owners. It is the claim of the petitioners that their lands at village Khambhada, Taluka-Dhandhuka, District-Ahmedabad were acquired in the year 1980 under the Land Acquisition Act, 1894 (hereinafter referred to as, "the Act") for construction of Patana-Sarangpur road. Feeling aggrieved and dissatisfied with the compensation offered by the State Government, the petitioners had applied for reference u/s 18 of the Act. The learned Assistant Judge, Ahmedabad (Rural) decided the said reference on 30th December, 1985. The learned Extra-Assistant Judge enhanced the compensation to Rs. 9/- per sq.mt., with 30% solatium and interest @ 9% per annum for the first year and @ 12% per annum for the remaining period till the amount of compensation was paid or deposited in the Court.

4. The learned Assistant Judge though had enhanced the amount of

compensation and also ordered payment of interest @ 12% per annum, did not extend the benefit of interest at the rate of 15% as specified by Section 28 of the Act and of 12% increase as envisaged by Section 23(1A) of the Act. Feeling aggrieved, the petitioners preferred above-referred first appeals for limited relief to claim interest @ 15% per annum and 12% increase as envisaged by Section 23(1A) of the Act.

5. This Court (Coram : Mr. Justice Kshitij R. Vyas, as he then was and Mr. Justice H. K. Rathod), by its judgment dated 21st October, 2002, was pleased to allow the appeals. The respondents were directed, "to pay to the appellants the interest at the rate of 9% per annum on the total amount of compensation awarded in favour of claimants including solatium for a period of one year from the date on which possession was taken, and thereafter, at the rate of 15% per annum shall be paid from the date of expiry of the said period of one year on the amount of such excess or part thereof which has not been paid in the Court before the date of such expiry. The respondents are further directed to pay 12% increase on the market price to the appellants which had been awarded by the Reference Court from the date on which notification u/s 4 was published i.e., from 31st July, 1980 till the award was passed by the Land Acquisition Officer i.e., 9th November, 1982." The Court further directed, "to pay the entire amount, as aforesaid, to the appellants within a period of three months from the date of receipt of writ of this judgment."

6. It is the grievance of the petitioners that though the aforesaid order was made as early as on 21st October, 2002, the difference in the amount of interest and increase has not been paid for nearly seven years.

7. It appears that since the notice of this writ petition, the respondent-Ahmedabad District Panchayat has paid up the amount of difference in interest and the amount of increase in the month of September, 2009.

8. Learned Advocate Mr. Amin has appeared for the petitioners. He admits the receipt of the amount of difference in interest and the amount of increase u/s 23(1A) of the Act. He has, however, submitted that though the aforesaid payment is made in the month of September, 2009, the interest @ 15% per annum has been paid for the period upto 31st August, 1988 and not thereafter. Mr. Amin has claimed that the petitioners are entitled to interest @ 15% per annum from the date of expiry of one year from the date the possession was taken over till September, 2009 - the date when the payment was made. He has also submitted that the petitioners have not been paid solatium as envisaged by Section 23(2) of the Act over the amount of increase paid u/s 23(1A) of the Act.

9. In answer to the notice issued by this Court, the respondent-District Panchayat has appeared through learned Advocate Ms. Rawal and has contested the petition. Ms. Rawal has taken us through the counter-affidavit and the statement of calculation of the amounts paid to the petitioners. She has submitted that the amount payable to the petitioners as directed by the High

Court has been paid to the petitioners. She has, however, contested the proposition that the petitioners are entitled to solatium @ 30% on the amount of increase paid u/s 23(1A) of the Act or to interest @ 15% per annum till the date of payment made in the month of September, 2009. She has submitted that in compliance with the direction issued by the learned Assistant Judge, the amount of compensation with solatium and interest was deposited in the Court on 3rd November, 1987 and 1st September, 1988. The respondent, was therefore, required to pay interest @ 15% per annum upto 1st September, 1988 and not upto September, 2009 as claimed by the petitioners. She has further submitted that the amount of increase u/s 23(1A) is not the amount of market value of the land envisaged by Section 23(1) of the Act. No solatium is payable on the amount of 12% increase paid u/s 23(1A) of the Act. In support of her submissions, she has relied upon the decision of the Hon'ble Supreme Court in the matter of P. Ram Reddy and Others Vs. Land Acquisition Officer, Hyderabad Urban Development Authority, Hyderabad and Others,

10. Section 28 of the Act provides for award of interest where the Court is of the opinion that the sum that the Collector ought to have awarded as compensation is in excess of the sum which the Collector did award as compensation. The said Section provides for payment of interest @ 9% per annum from the date the possession of the land was taken over till the date of payment of excess amount in the Court. The proviso thereof provides that in case such excess is paid in the Court after the expiry of period of one year, the interest @ 15% per annum shall be made payable from the date of expiry of the period of one year on the amount of such excess. A similar provision is made in Section 34 of the Act in cases where the amount of compensation is not paid or deposited before taking possession of the land.

11. In our opinion, the above-referred provisions provide for payment of interest over the amount of compensation @ 9% per annum if the amount of compensation or excess amount of compensation is paid or deposited within one year from the date of taking over of the possession. In case, such amount is not paid or deposited within one year from the date of taking over of the possession, the rate of interest payable is 15% per annum for the period from the date of expiry of the period of one year till the date of deposit or payment of the amount of compensation. In our opinion, Ms. Rawal is right in submitting that the interest was payable till 31st August, 1988, the date on which the amount of compensation was deposited in the Court.

12. In the matter of P. Ram Reddy (supra), the Hon'ble Supreme Court has considered the scope and ambit of Sections 23(1A) and 23(2) of the Act. The Hon'ble Court was pleased to hold that, "....the amount awardable under Sub-section (1A) of Section 23 of the L.A. Act, therefore, would be an amount of 12 per centum per annum on the market value of the land determined under first clause of Sub-section (1) of Section 23 for the period between the date of publication of notification u/s 4(1) (i.e. the last of the dates of such publication

and the giving of such public notice) and to the date of the award of the Collector or the date of taking possession of the land, whichever is earlier. " ...At has to be noted that the amount payable is 12 per centum per annum on the market value in the first clause of Sub-section (1) of Section 23 of the L. A. Act. It has also to be noted that solatium under Sub-section (2) is not payable in respect of the amount awardable under Sub-section (1A), in that, Sub-section (2) says that in addition to the market value of the land, as above provided, the Court shall in every case award a sum of thirty per centum on such market value, in consideration of the compulsory nature of the acquisition." The Hon"ble Court further held that, ""...Since, the amount payable under Sub-section (1A) of Section 23 as well as the solatium payable under Sub-section (2) are in addition to the market value of the land, as above provided, they necessarily refer to the market value of the land awardable in the first clause of Sub-section (1) of Section 23 of the L.A. Act."

13. From the above, it is clear that the petitioners have been, though belatedly, paid the interest @ 15% per annum as directed by the Court. The petitioners are entitled to interest @ 15% per annum till the date the amount was deposited or paid in the Court - in the present case 1st September, 1988. The claim for interest @ 15% per annum for the period from 1st September, 1988 till September, 2009 as a matter of right is misconceived and requires to be rejected. As held by the Hon"ble Supreme Court, the petitioners are not entitled to solatium on the amount of increase calculated @ 12% u/s 23(1A) of the Act.

14. We, however, are alive that the amount of difference in interest payable u/s 28 of the Act and the amount of increase u/s 23(1A) of the Act which was ordered to be paid by this Court as far back as in the month of October, 2002 within three months of the date of receipt of the writ of the Court was not paid to the petitioners until September, 2009 and until after the petitioners approached this Court. In our view, the petitioners are entitled to interest over such amount at a reasonable rate. We, therefore, direct the respondents to pay to the petitioners, interest @ 7% per annum over the aforesaid amount of difference in interest and 12% increase for the period from 1st March, 2003 till 30th September, 2009. The amount of interest, as directed above, shall be calculated and paid within two months from today. In the event, the respondents fail to pay such interest within two months as directed the respondents will be liable to pay interest over the said amount @ 10% per annum commencing from 21st March, 2010 till the date of payment.

15. The petition is allowed to the above extent. The parties will bear their own cost.

Registry will send the writ forthwith.